

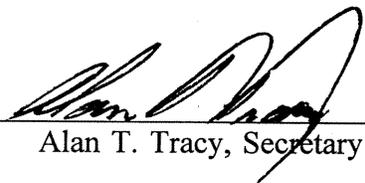
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 96-139 to the presiding officer of each house of the legislature for standing committee review. The proposed rule creates ATCP 21.15 relating to potato late blight.

Dated this 14th day of January, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

DATE: January 14, 1997

TO: The Honorable Charles Chvala
President, Wisconsin State Senate
119 Martin Luther King, Rm. 101
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Ben Brancel
Speaker, Wisconsin State Assembly
Rm. 211W, State Capitol
P.O. Box 8952
Madison, WI 53708

FROM: Alan T. Tracy, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Proposed Potato Late Blight Rule (Clearinghouse Rule No. 96-139)

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review. We are enclosing 3 copies of the final draft rule, together with the following report. Pursuant to s. 227.19(2) Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

INTRODUCTION

This rule requires potato growers to control "late blight", a serious plant disease that poses an imminent threat to Wisconsin's potato industry. This rule amends current plant protection rules under ch. ATCP 21, Wis. Adm. Code.

It has the support of the Wisconsin Potato and Vegetable Growers Association, the Wisconsin Agribusiness Council and the University of Wisconsin-Extension.

This rule is virtually identical to a temporary emergency rule that was adopted by the department on May 1, 1996. The only difference is that the proposed permanent rule includes an expanded definition of "cull pile." Under the permanent rule proposed, "cull pile" means a waste pile of harvested potatoes and includes seed cutting slivers and waste, storage remnants and sweepings (underlined language added based on testimony from emergency rule hearing).

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BACKGROUND

In recent years, new forms of the highly virulent "Irish potato famine" fungus, Phytophthora infestans, have caused increasingly devastating losses to potato growers in the United States and Canada. The fungus causes a disease of potato plants which is commonly known as "late blight."

The National Association of State Departments of Agriculture reports that late blight epidemics in 1992, 1993 and 1994 were the worst in decades, and that some individual farm losses have amounted to hundreds of thousands of dollars in a single year. The University of Wisconsin estimates that Wisconsin growers lost up to \$10 million in 1994 and \$6 million in 1995 due to late blight.

The potato industry is one of Wisconsin's most important agricultural industries. In 1995, Wisconsin was the 3rd leading state in the nation in potato production. Cash receipts to Wisconsin potato growers totalled over \$150 million in 1995. Potatoes are an important food source for the people of Wisconsin and other states. Potato production also supports important processing and distribution industries in Wisconsin. The uncontrolled spread of late blight would have a devastating impact on Wisconsin potato growers, and would seriously affect the public health, safety and welfare.

Late blight appears on potato plant leaves, stems and tubers. It causes foliar lesions which are followed by severe defoliation in wet weather. It can also reduce marketable yield by directly infecting and rotting potato tubers. Once late blight appears, it spreads rapidly and can cause total crop loss.

Late blight fungal spores can be spread by many things, including wind, rain, machinery, workers, wildlife and infected seed potatoes. Reports indicate that spores can be transported over 60 miles by storms.

There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus. Because of the lack of registered fungicides, and the ease with which the late blight fungus spreads, potato growers must mitigate the spread of the disease by removing sources of the overwintering inoculum. Among other things, potato growers must properly dispose of potato cull piles and "volunteer" potato plants which germinate from waste potatoes.

A failure by individual potato growers to implement necessary cultural practices to mitigate the spread of late blight will have a potentially devastating impact on other growers, and on the Wisconsin potato industry as a whole.

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In order to ensure that growers take adequate steps to mitigate the spread of late blight, it is necessary to adopt rules that spell out critical practices and establish sanctions for growers who fail to comply.

RULE CONTENTS

Under this rule, the department may issue pest quarantine and abatement orders to prevent or control late blight infestations, or to remedy violations of this rule. If the department finds any field infested with late blight, the department may order the person owning or controlling that field to treat it, in a manner specified by the department, in order to control or eliminate the infestation. Treatment may include pesticide applications specified by the department.

Under this rule, the department may order the destruction of a potato crop infested with late blight if the department finds that alternative measures will not adequately prevent or mitigate the spread of late blight.

Under this rule, a person who owns or controls land on which potato "cull piles" are located must dispose of those cull piles by May 20th of each year by one of the following methods:

- By feeding the cull potatoes to livestock so that they are completely consumed by May 20th of each year.
- By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.
- By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.
- By another method which the department approves in writing.

Under this rule, whenever volunteer potato plants appear on land where cull potatoes were spread, or on land where potato plants were intentionally grown in a prior year, the person who owns or controls that land must immediately remove or kill those volunteer potato plants. Pesticides used to kill volunteer potato plants must be labeled for the crop in which the volunteer potatoes emerge, or for the site at which they emerge.

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HEARING COMMENTS

The Board approved this proposed rule for public hearing on August 1, 1996, and the department held one hearing in Stevens Point on October 8, 1996. Only one person attended and testified, Mr. Dean Zuleger, Executive Director of the Wisconsin Potato and Vegetable Growers Association, Inc. He was supportive of the rule indicating that problems with cull pile management in the spring and volunteer potatoes appear to be solved and, in the future, the department should emphasize control of this disease throughout the year. There were no written comments.

RESPONSE TO RULES CLEARINGHOUSE COMMENTS

The Legislative Council Rules Clearinghouse made a few technical comments on the hearing draft rule. Those comments have been addressed in the final draft rule.

ADMINISTRATIVE IMPACT

The department does not expect this rule to have significant fiscal, environmental or small business effects. A fiscal estimate and small business analysis (initial regulatory flexibility analysis) are attached. No environmental assessment is required.

PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection proposes the following order to create ATCP
3 21.15 relating to potato late blight.

Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: ss. 93.07(1) and (12) and 94.01(1)
Stats.

Statutes interpreted: ss. 93.07(12) and 94.02(1) Stats.

This rule modifies ch. ATCP 21, Wis. Adm. Code. It requires potato growers to take steps to control "late blight," a serious plant disease which poses an imminent threat to Wisconsin's potato industry.

Background

In recent years, new forms of the highly virulent "Irish potato famine" fungus, *Phytophthora infestans*, have caused increasingly devastating losses to potato growers in the United States and Canada. The fungus causes a disease of potato plants which is commonly known as "late blight."

The National Association of State Departments of Agriculture reports that late blight epidemics in 1992, 1993 and 1994 were the worst in decades, and that some individual farm losses have amounted to hundreds of thousands of dollars in a single year. The University of Wisconsin estimates that Wisconsin growers lost up to \$10 million in 1994 and \$6 million in 1995 due to late blight.

The potato industry is one of Wisconsin's most important agricultural industries. In 1995, Wisconsin was the 3rd leading state in the nation in potato production. Cash receipts to Wisconsin potato growers totalled over \$150 million in 1995. Potatoes are an important food source for the people of Wisconsin and other states. Potato production also supports important processing and distribution industries in Wisconsin. The uncontrolled spread of late blight would have a devastating

the public health, safety and welfare.

Late blight appears on potato plant leaves, stems and tubers. It causes foliar lesions which are followed by severe defoliation in wet weather. It can also reduce marketable yield by directly infecting and rotting potato tubers. Once late blight appears, it spreads rapidly and can cause total crop loss.

Late blight fungal spores can be spread by many things, including wind, rain, machinery, workers, wildlife and infected seed potatoes. The University of Wisconsin reports that spores can be transported over 25 miles by storms.

There are very few registered fungicides in the United States that are effective in controlling the new forms of late blight fungus. Because of the lack of registered fungicides, and the ease with which the late blight fungus spreads, potato growers must mitigate the spread of the disease by removing sources of the overwintering inoculum. Among other things, potato growers must properly dispose of potato cull piles and "volunteer" potato plants which germinate from waste potatoes.

A failure by individual potato growers to implement necessary cultural practices to mitigate the spread of late blight will have a potentially devastating impact on other growers, and on the Wisconsin potato industry as a whole.

In order to ensure that growers take adequate steps to mitigate the spread of late blight, it is necessary to adopt rules that spell out critical practices and establish sanctions for growers who fail to comply.

Rule Contents

Under this rule, a person who owns or controls land on which potato "cull piles" are located must dispose of those cull piles by May 20 of each year. ("Cull piles" are piles of waste potatoes and include seed cutting slivers and waste, storage remnants and sweepings.) The person must dispose of the "cull piles" by one of the following methods:

- By feeding the cull potatoes to livestock so that they are completely consumed by May 20 of each year.
- By spreading the cull potatoes on fields and incorporating the cull potatoes into the soil.
- By depositing the cull potatoes in a licensed landfill with the written permission of the landfill operator.
- By another method which the department approves in writing.

1 land on which potato cull piles are located shall dispose of
2 those cull piles by May 20 of each year by one of the following
3 methods:

4 (a) By feeding the cull potatoes to livestock so that they
5 are completely consumed by May 20.

6 (b) By spreading the cull potatoes on fields and
7 incorporating the cull potatoes into the soil.

8 (c) By depositing the cull potatoes in a licensed landfill
9 with the written permission of the landfill operator.

10 (d) By another method which the department approves in
11 writing.

12 (3) CONTROLLING VOLUNTEER POTATO PLANTS. Whenever
13 volunteer potato plants appear on land, the person who owns or
14 controls that land shall immediately remove or kill those
15 volunteer potato plants. Pesticides used to kill volunteer
16 potato plants shall be labeled for the crop in which the
17 volunteer plants emerge, or for the site at which they emerge.

18 (4) ENFORCEMENT. (a) The department may issue pest
19 quarantine and abatement orders under ss. 94.01 and 94.02,
20 Stats., and s. ATCP 21.03, to prevent or control late blight
21 infestations, or to remedy violations of this section.

22 (b) If the department finds any field infested with late
23 blight, the department may order the person owning or controlling
24 that field to treat it, in a manner specified by the department,
25 in order to control or eliminate the infestation. Treatment may
26 include pesticide applications specified by the department.

1 (c) The department may order the destruction of a potato
2 crop infested with late blight if the department finds that
3 alternative measures will not adequately prevent or mitigate the
4 spread of late blight.

5 (d) The department may seek to prosecute violations of this
6 section under s. 94.77, Stats.

7 NOTE: The university of Wisconsin-extension plant
8 pathology and horticulture departments have developed
9 integrated pest management procedures (IPM) that help
10 protect against late blight. Growers are urged to
11 follow these IPM procedures. IPM procedures and late
12 blight forecasting information are available from the
13 UW-extension county agricultural agent, or through a
14 UW-extension computer program called the potato disease
15 management plan under WISDOM.
16
17

18 **SECTION 2.** The rules contained in this order shall take
19 effect on the first day of the month following publication in the
20 Wisconsin administrative register, as provided under ss.
21 227.22(2)(intro.), Stats.
22

23 Dated this _____ day of _____, 1996.

24
25 STATE OF WISCONSIN
26 DEPARTMENT OF AGRICULTURE, TRADE
27 AND CONSUMER PROTECTION
28

29
30 By _____
31 Alan T. Tracy, Secretary

Initial Regulatory Flexibility Analysis
Proposed Ch. 21, Wis. Adm. Code

POTATO LATE BLIGHT

The proposed rule will not significantly affect small business because it does not impose any new reporting or recordkeeping requirements and does not require new professional skills that might be needed by a small business (technical assistance is available from the University of Wisconsin-Extension and the growers' association). This proposed rule applies to potato growers. (Currently, there are 262 growers, 237 of which meet the definition of a small business.)

The proposed rule defines the practices that are necessary to control a highly virulent potato fungus, commonly known as "late blight." It also clarifies the department's authority to enforce those practices. Growers are required to dispose of cull potatoes and volunteer potato plants and must treat or dispose of diseased crops in order to mitigate the spread of late blight.

Most growers are well aware of the severe economic damage that this disease can cause and are already following pest management practices recommended by the University-Extension/Plant Pathology Department and outlined in the proposed rule.

Dated this 28th day of June 1996.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By:

Nicholas J. Nemer
Nicholas J. Nemer, Administrator
Division of Agricultural
Resource Management

1995 Session

LRB or BILL No./Adm. Rule No.
ATCP 21.15

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 (R 10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Potato late blight control

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts VTAE Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule clarifies integrated pest management control practices needed to mitigate the spread of a serious potato plant disease which poses an imminent threat to Wisconsin's potato industry. It also reiterates existing department authority to enforce these control measures. Because these are existing practices and authority, no significant increase in department workload or costs is anticipated. There are no additional costs to local government.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

DATCP/Esther Chapman 224-4590

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp

224-4746

Date

04/26/96

Chairman:
Agriculture Committee



Member:
Environment & Utilities
Government Operations
Natural Resources
Rural Affairs

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

To: Members of the Assembly Agriculture Committee

From: Representative Al Ott, Chair

Date: January 24, 1997

The following clearinghouse rules have been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 96-138

Relating to financial standards and security requirements for vegetable contractors. Submitted by the Department of Agriculture, Trade and Consumer Protection.

Clearinghouse Rule 96-139

Relating to potato late blight. Submitted by the Department of Agriculture, Trade and Consumer Protection.

Clearinghouse Rule 96-142

Relating to atrazine use restrictions. Submitted by the Department of Agriculture, Trade and Consumer Protection.

The deadline for action on these rules is **February 22, 1997**. If you would like a copy of any of the rules, please contact my office at **266-5831**.